

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
NPCR, INC. d/b/a NEXTEL PARTNERS)
)
Petition for Designation as an)
Eligible Telecommunications Carrier)
in the State of Tennessee)
_____)

File No.

RECEIVED

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CC: 96-48

**PETITION FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
IN THE STATE OF TENNESSEE**

NPCR, INC. d/b/a NEXTEL PARTNERS

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Date: June 12, 2003

[Signature]

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SUMMARY

Nextel Partners is seeking designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act") in certain Designated Areas in the state of Tennessee, including specified wire centers of a non-rural ILEC covered in their entirety and certain wire centers of a partially-covered rural telephone service area.

To the extent necessary for designation as an ETC in the rural telephone company study area that is only partially covered, Nextel Partners seeks redefinition of that study area to split the study area into two separate service areas. Nextel Partners has submitted a list of wire centers for the rural study area partially covered.

Designation of Nextel Partners as an Eligible Telecommunications Carrier is appropriate, since Nextel Partner meets all of the criteria set forth in Section 214 of the Act, and in Part 54 of the Commission's Rules. In addition, designation of Nextel Partners as an ETC in the indicated rural telephone company study areas is supported by the public interest in light of the innovative services and consumer choice that Nextel Partners' presence can bring to bear in those areas.

To the extent that Nextel Partners requests redefinition of a rural telephone company service area, Nextel Partners' request complies with applicable law, meets the concerns noted by the Joint Federal-State Board and is in the public interest.

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**PETITION FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN THE STATE OF TENNESSEE**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), hereby submits this Petition for Designation ("Petition") as an eligible telecommunications carrier ("ETC") in the State of Tennessee. Nextel Partners is licensed to, and provides, wireless telecommunications services throughout certain designated areas (the "Designated Areas") of the State of Tennessee.¹ Nextel Partners seeks designation as an ETC for both wire centers of a non-rural incumbent LEC as well as a partially-covered study area of a rural telephone company as defined in Section 153(37) of the Act.² As demonstrated herein, Nextel Partners meets all of the requirements for designation as an ETC in each of these Designated Areas and respectfully requests that the Commission promptly grant this Petition.

¹ Nextel Partners holds A, B and C Block EA licenses in the northeast part of Tennessee.

² A list of the non-rural incumbent LEC wire centers and the wire centers of the partially-covered rural telephone company service area for which Nextel Partners seeks designation in this Petition (also referred to herein as the "Designated Areas") is set forth as **Attachment 1** hereto.

I. Nextel Partners Meets All the Requirements for Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Tennessee

Under Section 214(e)(6) of the Act, 47 U.S.C. § 214(e)(6), the Commission, consistent with the public interest, convenience and necessity, may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of § 214(e)(1). The Commission has previously identified the showing a carrier must make to meet the requirements of § 214(e)(6).³ As demonstrated below, and as set forth in the declaration of Donald Manning, **Attachment 4** hereto, Nextel Partners meets each of these requirements.

A. Nextel Partners Will Provide Service Over its Own Facilities

Nextel Partners has sufficient wireless network infrastructure facilities and capacity to provide supported services throughout the Designated Areas in the State of Tennessee over its own facilities.

B. Nextel Partners Offers All Required Services and Functionalities

Nextel Partners offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules, 47 CFR § 54.101(a), including the following:

1. Voice grade access to the public switched telephone network. Voice grade access to the public switched telephone network ("PSTN") means the ability to make and receive traditional voice phone calls, within a bandwidth of approximately 3500 Hertz.⁴ Nextel Partners' voice grade access enables a user of telecommunications services to transmit voice

³ Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(3)(6) of the Communications Act, FCC 97-419 (released December 29, 1997).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11 ("*USF Order*").

communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. The bandwidth for Nextel Partners' voice grade access is, at a minimum, 300 to 3,000 Hertz.

2. Local Usage. As part of the voice grade access to the PSTN, an ETC

must provide local calling. Nextel Partners, through its wireless network, provides subscribers the ability to send and receive local phone calls both over Nextel Partners' network and through interconnection with the incumbent local exchange carriers serving the Designated Areas. Local usage is included in all of Nextel Partners' calling plans. As a designated ETC, Nextel Partners will comply with any and all minimum local usage requirements adopted by the Commission.

3. Dual tone multi-frequency ("DTMF") signaling or its functional

equivalent. DTMF signaling allows carriers to provide expeditious call setup, and enables modem usage.⁵ Nextel Partners uses out-of-band signaling and in-band multifrequency signaling that is functionally equivalent to DTMF.

4. Single-party service or its functional equivalent. Nextel Partners

provides customers with single-party access for the duration of every phone call. Nextel Partners does not provide "multi-party" or "party line" services.

5. Access to 911 and E911 emergency service. The Commission has

declared that access to emergency services is essential.⁶ Nextel Partners provides universal access to the 911 system for its customers, and has implemented and will continue to implement E911 services consistent with the Commission's Rules and Orders and local PSAP requests. As of February 1, 2003, Nextel Partners has launched six Tennessee counties at Phase I, and six additional counties pending.

⁵ *USF Order* at 8814.

⁶ *Id.* at 8815.

6. **Access to operator services.** Nextel Partners offers all of its customers access to operator services, in accordance with the Commission's requirements.

7. **Access to interexchange ("IXC") service.** Nextel Partners customers can use the Nextel Partners network for IXC access to place long distance phone calls. Access is through interconnection agreements with several IXC carriers. Nextel Partners' customers can also reach their IXC of choice by dialing the appropriate access code.

8. **Access to directory assistance.** All Nextel Partners customers receive access to 411 directory assistance service through the Nextel Partners network.

9. **Toll limitation for qualified low-income customers.** As required by the Commission's Rules, Nextel Partners, upon designation as an ETC, will make available to qualifying low-income customers a solution that assists these low-income persons to control their telephone costs.⁷ Nextel Partners is fully capable of providing such a toll limiting service to its customers. Nextel Partners does not presently offer a toll limitation feature, because it is not an ETC. Upon designation as an ETC, Nextel Partners will participate in, and offer, LifeLine and Link-Up programs as required by the Commission's Rules. In accordance with Section 54.401(b) of the Commission's Rules, 47 CFR § 54.401(b), Nextel Partners will not disconnect Lifeline service for non-payment of toll charges.

C. **The Tennessee Regulatory Authority Does Not Regulate CMRS Service**

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the Tennessee Regulatory Authority (the "TRA") does not regulate CMRS carriers such as Nextel Partners for the purpose of making ETC determinations. A letter from the TRA evidencing the fact that the TRA does not regulate

⁷ *Id.* at 8821-22.

CMRS carriers, and in particular, does not accept jurisdiction over Nextel Partners for the purpose of an ETC status determination, is attached to this Petition as **Attachment 2**. This letter meets the Commission's specific requirements, in that it specifies that Nextel Partners is not subject to regulation in the State of Tennessee for purposes of determinations concerning eligibility for ETC status. Nextel Partners accordingly requests that the FCC designate Nextel Partners as "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission" pursuant to 47 U.S.C. § 214(c)(6).

D. Nextel Partners Will Advertise the Availability of Supported Services

Nextel Partners will advertise the availability of the above-described services and the charges therefor using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the Commission's Rules, 47 CFR § 54.201(d)(2). Nextel Partners currently advertises the availability of its services, and will do so for each supported service on a regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of Tennessee.

II. Nextel Partners Requests Designation Throughout Each of the Designated Areas Within Its Service Coverage

Nextel Partners is not a rural telephone company as defined in Section 153(37) of the Communications Act, 47 U.S.C. § 153(37). Accordingly, Nextel Partners is required to describe the geographic area(s) within which it requests designation as an ETC. Nextel Partners requests designation as an ETC throughout each of the Designated Areas within the State of Tennessee, as set forth in **Attachment 1**. As noted above, these Designated Areas consist both of specific wire centers of non-rural incumbent LECs and specific wire centers of a partially-covered rural ILEC

study area.⁸ In **Attachment 3** hereto, Nextel Partners provides a map of its service area, within which Nextel Partners provides service to the Designated Areas listed in **Attachment 1** hereto.⁹ Since Nextel Partners covers only a portion of the indicated rural telephone company study area (SAC¹⁰ 290567 United Inter-MT-TN), Nextel Partners specifically requests designation as an ETC for those portions of the rural telephone company service area served by Nextel Partners, as discussed in **Section V** hereof. In the case of the non-rural ILEC wire centers served by Nextel Partners, as discussed immediately below, the Commission may designate Nextel Partners as an ETC without redefining the service area of the non-rural ILEC.

III. In Accordance with 47 U.S.C. § 214(e)(6), Nextel Partners Is Entitled to Be Designated as an ETC in Non-Rural Wire Centers

To the extent Nextel Partners is serving non-rural wire centers and providing the services set forth in Section I of the present Petition as required by Section 214(e) the Act and the FCC's implementing rules, as set forth in 47 C.F.R. Section 54.201(c), Nextel Partners is entitled to be granted ETC status by the Commission with respect to the non-rural wire centers attached hereto as **Attachment 1**. See 47 U.S.C. § 214(e)(6).

⁸ Wireless service is inherently affected by conditions unique to wireless service providers and which conditions do not affect wireline service providers. Geography, atmospheric conditions and man-made radiofrequency and physical structure interference may at times reduce or increase a wireless user's coverage area. At the same time, the mobility and functionality of wireless phone service adds immense benefits and convenience to wireless users that wireline providers cannot match.

⁹ For purposes of this Petition, the coverage map provided in **Attachment 3** hereto reflects the result of a conservative radiofrequency propagation analysis assuming a one-watt wireless phone at -105dB.

¹⁰ "SAC" stands for "Study Area Code."

IV. Designation of Nextel Partners as an ETC for the Designated Areas Served by a Rural Telephone Company In the State of Tennessee Would Serve the Public Interest

Certain of the Designated Areas in which Nextel Partners seeks certification are wire centers that are part of a service area served by a rural telephone company as defined in Section 153(37) of the Communications Act.¹¹ With respect to areas served by a rural telephone company, the Act requires that the Commission determine that Nextel Partners' designation as an ETC is in the public interest.¹² As demonstrated below, Nextel Partners' designation as an ETC would serve the public interest in all of the Designated Areas in a number of ways.

The Commission has determined that "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."¹³ This is particularly applicable in the Designated Areas served by rural telephone companies within the State of Tennessee, which are rural, and in some cases remote, areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LEC. Designation of Nextel Partners as an ETC will provide a valuable alternative to the existing telecommunications regime in these areas, including a larger local calling area, the benefits of mobile telephony service and, where requested by the PSAP, GPS location assistance for customers calling 911.

In addition, designation of Nextel Partners as an ETC will provide an incentive to the incumbent LECs in all of the Designated Areas to improve their existing networks in order to remain competitive, resulting in improved services to consumers. Designation of Nextel Partners

¹¹ See **Attachment 1** hereto.

¹² See 47 U.S.C. § 214(e)(6).

¹³ See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000).

as an ETC in each case will also benefit consumers because support to services provided by Nexiel Partners will help assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Act.¹⁴

Designation of Nexiel Partners as an ETC will also serve the public interest in all of the Designated Areas because Nexiel will provide all of the supported services required by the Commission, will participate in the Lifeline and Link-Up programs as required by the Commission's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Act are achieved. Allowing Nexiel Partners access to universal service subsidies will allow Nexiel Partners to continue to enhance and expand its network infrastructure to better serve consumers in underserved, high-cost areas of the State of Tennessee, and to compete with other carriers on a level regulatory playing field.

Finally, designation of Nexiel Partners as an ETC will serve the public interest in all of the Designated Areas by further promoting the extensive role Nexiel Partners plays in the provision of communications services to Tennessee universities, colleges, public schools, libraries and local, state and federal government agencies, specifically law enforcement. At the time of this filing, Nexiel Partners provides wireless service to 5 Tennessee public universities, colleges, schools and libraries, 6 divisions of Federal Government agencies in Tennessee, 11 state-level agencies, and 6 local government agencies, including police, fire and similar first-responders. Moreover, many individuals who work for these organizations and government agencies have obtained Nexiel Partners as a service provider, and utilize the Nexiel Partners network in connection with their official duties.

¹⁴ See 47 U.S.C. § 254(b)(1).

Accordingly, designation of Nextel Partners as an ETC will serve the public interest.

V. Since Nextel Partners Serves Only a Portion of a Rural Telephone Company Service Area in Tennessee, Nextel Partners Requests That the FCC Propose A Redefinition of that Service Area

Nextel Partners covers only part of a rural telephone company study area, SAC 290567 United Inter-MT-TN. Nextel Partners requests designation as an ETC for its entire service area in Tennessee, including specific portions of this rural study area that are covered by Nextel Partners. To this end, Nextel Partners has specified in **Attachment 1** with respect to the indicated rural telephone company study area the list of wire centers that Nextel Partners does cover in their entirety, and for which designation as an ETC is requested.

Nextel Partners specifically requests that the Commission propose a redefinition of the indicated rural telephone company study area so that the wire centers served by Nextel Partners may be designated as a single service area, and the remaining wire centers not served by Nextel Partners in each instance may be designated as a separate service area.

This proposed redefinition of the indicated rural telephone company service area is consistent with the Joint Board's analysis. Pursuant to 47 C.F.R. Section 54.207(c)(1), a petition to redefine a rural LEC service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service areas served by a rural telephone company." Nextel Partners has requested that the Commission redefine the service area of SAC 290567 United Inter-MT-TN.

In *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*"), the Joint Board listed three factors that must be considered in the context of redefinition of a rural service area. First, it must be considered whether the competitive carrier is attempting to "cream-skim" by proposing to serve only the

lowest cost exchanges. *See Recommended Decision* at 180. In the case of Nextel Partners, Nextel Partners' service territory is governed by the grant of license authority from the Federal Communications Commission under various site-specific and geographic area licenses. Nextel Partners' build-out of its licensed service area in Tennessee has been carried out as mandated by the construction deadlines and population coverage requirements under Nextel Partners' licenses, and does not reflect any intent on Nextel Partners' part to serve only the lowest-cost exchanges within a rural telephone company study area.

Second, the special status of the affected rural carriers under the Communications Act must be considered, to determine how the public interest might be affected by the award of ETC status to Nextel Partners. *See id.* Nextel Partners has set forth a number of reasons why the grant of ETC status in the State of Tennessee would be in the interest of the public, *see supra*.

Third, there is the question of the administrative burden that might be inflicted on the rural ILEC if it is compelled to figure its costs on a basis other than its entire study area. But this "prong" of the Joint Board's analysis is not directly applicable in this instance, since Nextel Partners is seeking redefinition of the indicated rural ILEC study area solely for the purpose of Nextel Partners' designation as an ETC, and not for the purpose of refashioning the manner in which the affected carrier calculates its costs.

Accordingly, the considerations outlined by the Joint Board do not bar the grant of ETC status to Nextel Partners in the case of redefinition of the partially covered rural ILEC study area; in fact, since the addition of the innovative services and competitive offerings Nextel Partners brings to the equation can only benefit the public interest, the application of the Joint Board's analysis in this instance mandates a favorable outcome.

VI. Anti-Drug Abuse Certification

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.¹⁵

VII. High-Cost, Interstate Access, and Interstate Common Line Support Certification

Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules, as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Act. As explained above, the TRA does not exercise jurisdiction over CMRS carriers such as Nextel Partners for the purpose of ETC status designations. Therefore, Nextel Partners will submit its high-cost, interstate access and interstate common line support certification letters with the Commission and with USAC.

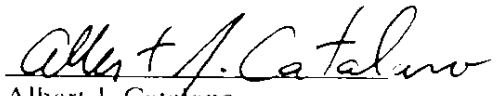
VIII. Conclusion

Because the requirements for eligibility for designation as an eligible telecommunications carrier have been met, Nextel requests that the Commission promptly grant this Petition.

¹⁵ See Declaration of Donald Manning, **Attachment 4** hereto.

Respectfully submitted.

NPCR, INC. d/b/a NEXTEL PARTNERS

By 
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Counsel for Nextel Partners

Date: June 12, 2003

ATTACHMENT 1

Designated Areas for which Nextel Partners
seeks ETC designation in this Petition

I. Non-Rural ILEC Wire Centers

295185 BellSouth

47BLGPTNMA	BULLS GAP
47CHTGTNBR	CHATTNOOGA
47CHTGTNDT	CHATTNOOGA
47CHTGTNHT	CHATTNOOGA
47CHTGTNNS	CHATTNOOGA
47CHTGTNRB	CHATTNOOGA
47CHTGTNSM	CHATTNOOGA
47CLEVTNMA	CLEVELAND
47CLTNTNMA	CLINTON
47CLVLTNMA	CLARKSVL
47CRVLTNMA	COLLIERVL
47DNRGTNMA	DANDRIDGE
47FKLNTNCC	FRANKLIN
47FKLNTNMA	FRANKLIN
47FRDNTNMA	SOFREDONIA
47FYVLTNMA	FAYETTEVL
47GRVLTNXA	GREENEVL
47HCRDTNXA	HLSCRSSRDS
47HDVLTNMA	HENDERSNVL
47HHNWTNMA	HOHENWALD
47JCSNTNMA	JACKSON
47JFCYTNMA	JEFFERSNCY
47JLLCTNMA	JELLICO
47KNVLTNBE	KNOXVILLE
47KNVLTNFC	KNOXVILLE

47KNVLTNMA	KNOXVILLE
47KNVLTNWH	KNOXVILLE
47KNVLTNYH	KNOXVILLE
47LBNNTNMA	LEBANON
47LFLTTNMA	LAFOLLETTE
47LNCYTNMA	LENOIRCITY
47LODNTNMA	LOUDON
47LYLSTNMA	SPENCERMIL
47MAVLTNMA	MARYVILLE
47MCKNTNMA	MCKENZIE
47MMPHTNBA	MEMPHIS
47MMPHTNCK	MEMPHIS
47MMPHTNCT	MEMPHIS
47MMPHTNEL	MEMPHIS
47MMPHTNGT	MEMPHIS
47MMPHTNMA	MEMPHIS
47MMPHTNMT	MEMPHIS
47MMPHTNOA	MEMPHIS
47MMPHTNSL	MEMPHIS
47MMPHTNWW	MEMPHIS
47MNCHTNMA	MANCHESTER
47MRBOTNMA	MURFREESBO
47MRTWTNMA	MORRISTOWN
47MSCTTNMT	MASCOT
47NSVLTNAP	NASHVILLE
47NSVLTNBW	NASHVILLE
47NSVLTNCH	NASHVILLE
47NSVLTNDO	NASHVILLE
47NSVLTNHH	NASHVILLE
47NSVLTNIN	NASHVILLE
47NSVLTNMC	NASHVILLE

47NSVLTNMT	NASHVILLE
47NSVLTNST	NASHVILLE
47NSVLTNUN	NASHVILLE
47OKGVKYES	SOOAKGROVE
47OKRGTNMT	OAK RIDGE
47PSVWTNMT	PLEASANTVW
47PTLDTNMA	PORTLAND
47RRVLTNMA	ROGERSVL
47SANGTNMT	EASTSANGO
47SHCPTNXA	SHARPSCHPL
47SMYRTNMA	SMYRNA
47SNVLTNMA	SNEEDVILLE
47SRVLTNMA	SURGOINSVL
47SVVLTNMT	SEVIERV
47SWTWTNMT	SWEETWATER
47TLLHTNMA	TULLAHOMA
47UNCYTNMA	UNION CITY
47WHBLTNMT	WHITEBLUFF
47WHHSTNMA	WHITEHOUSE
47WHPITNMA	WHITE PINE

2. Covered Wire Centers of Partially Covered Rural Telephone Company Study Area

290567 United Inter-MT-TN

47BLCYTNXA	BLUFF CITY
47BLTNTNXA	BAILEYTON
47BRSTTNXA	BRISTOL
47BRSTTNXB	BRISTOL
47BTLRTNXA	BUTLER
47BUVLTNXA	BLOUNTVL
47CHHLTNXA	CHURCHHILL

47ELTNTNXA	ELIZABHTN
47ERWNTNXA	ERWIN
47FLBRTNXA	FALLBRANCH
47GRVLTNXA	GREENEVL
47HMPNTNXA	HAMPTON
47JHCYTNXA	JOHNSON CY
47JHCYTNXC	JOHNSON CY
47JNBOTNXA	JONESBORO
47KGPTTNXA	KINGSPORT
47KGPTTNXC	KINGSPORT
47LMSTTNXA	LIMESTONE
47MDWYTNXA	MIDWAY
47MOSHTNXA	MOSHEIM
47MTCYTNXA	MOUNTAINCY
47RNMTTNXA	ROAN MT
47SLGRTNXA	SULIVNGDNS
47STCKTNXA	STONEY CRK

ATTACHMENT 2

Letter establishing that the TRA does not regulate Nextel Partners
for the purpose of making ETC status determinations

TENNESSEE REGULATORY AUTHORITY



Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

April 28, 2003

Mr. Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007

Re: Request for Advisory Letter Concerning Jurisdiction for Competitive
Eligible Telecommunications Carrier Status

Dear Mr. Jarvis:

Your letter of February 7, 2003, requested an affirmative written statement verifying that NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), a Commercial Mobile Radio Service Provider ("CMRS") in Tennessee, is not subject to the jurisdiction of the Tennessee Regulatory Authority ("TRA") for the purposes of determining Eligible Telecommunications Carrier ("ETC") status pursuant to Section 214(e)(6) of the Communications Act of 1934.

Since your letter was not accompanied by the standard filing fee nor is it a request to be granted ETC status in Tennessee, this matter has not been placed on a regularly scheduled Authority Conference agenda to be deliberated by the Directors of the TRA. As a result, no order will be issued by the TRA in this instance. However, it is my understanding that conversations between your office and Mr. Carsie Mundy of our Staff indicate that you would prefer a letter containing the affirmative statement mentioned above.

In a prior docket, the Authority unanimously ruled that another CMRS provider, Advantage Cellular Systems, Inc., was not subject to the authority of the TRA for purposes of ETC designation for federal universal service support.¹ Lacking the authority to designate the carrier as an ETC in Tennessee, the TRA issued an order dismissing Advantage Cellular System's application for lack of subject matter jurisdiction. A copy of the order is attached.

¹ *Application of Advantage Cellular Systems, Inc. to be Designated as an Eligible Telecommunications Carrier*, Docket No. 02-01245.

Based upon the previous ruling, and compliant with state and federal statutes, NPCR, Inc. d/b/a Nextel Partners is not subject to the authority of the Tennessee Regulatory Authority for the purposes of designation as an Eligible Telecommunications Carrier for federal universal service support. Since the TRA cannot designate NPCR, Inc. d/b/a Nextel Partners as an ETC in Tennessee, Nextel Partners should petition the Federal Communications Commission for ETC status pursuant to 47 U.S.C. § 214 (e)(6).

If you have any questions concerning this matter, please call C. D. Mundy at 615-741-2791 ext. 166 or myself at 615-741-2791 ext. 175.

Yours truly,


Joe Werner
Telecommunications Chief

Attachment: 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, “[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission.”

The Authority’s lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission’s jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission (“FCC”) to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority’s decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission’s rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

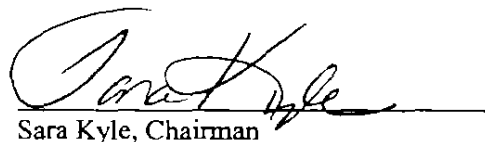
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

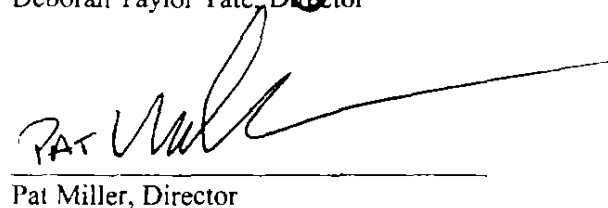
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

ATTACHMENT 3

Map of Nextel Partners' coverage areas
in the State of Tennessee

(Note: The "red cloud" overlaying portions of the State map to
the north and northeast depicts Nextel Partners' coverage.)



ATTACHMENT 4

Declaration of Donald Manning

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	File No.
Universal Service)	
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Tennessee)	
_____)	

Declaration of Donald Manning

I, the undersigned Donald J. Manning, do hereby declare under penalty of perjury as follows:

1. I serve as Vice-President and General Counsel for Nextel Partners, Inc. ("Nextel Partners") and each of its subsidiary companies, including, but not limited to, NPCR, Inc. d/b/a Nextel Partners.

2. NPCR, Inc. is a wholly-owned, operational-arm subsidiary of Nextel Partners Operating Corp., which is a wholly-owned, operational subsidiary of Nextel Partners, Inc.

3. Nextel Partners, Inc. is a publicly-traded company with its common stock listed on the Nasdaq market, and is broadly owned by both institutional and individual investors.

4. Nextel Partners, Inc.'s President is John Chapple. Vice Presidents include Don Manning, Perry Satterlee, John Thompson, Mark Fanning, and Dave Aas. Entities with 5% or more equity positions with Nextel Partners, Inc. include: Credit Suisse First Boston through several funds held by DLJ Merchant Banking, Madison Dearborn Partners, Wellington Management Co., Eagle River Investments, Motorola, Cascade Investments (an investment company controlled by William H. Gates, III), and Nextel Communications, Inc.

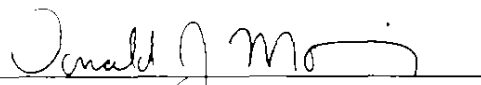
5. This Declaration is submitted in support of Nextel Partners' "Petition for Designation As an Eligible Telecommunications Carrier." to which this Declaration is appended.

6. I declare and certify as follows, and as described in the aforementioned Petition, that: Nextel Partners offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c)(3) of the Act; that Nextel Partners offers, or will offer, the supported services using its own facilities; and that Nextel Partners advertises, or will advertise, the availability of supported services and the charges therefore using media of general distribution as described in the annexed Petition.

7. I further declare that I have reviewed the annexed Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

8. I further declare that to the best of my knowledge, Nextel Partners, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of Nextel as specified in Section 1.2002(b) of the Commission's Rules are not subject to denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

A handwritten signature in dark ink, appearing to read "Donald J. Manning", is written over a horizontal line.

Donald J. Manning
Vice President and General Counsel
NPCR, Inc. d/b/a Nextel Partners

Dated: May 26, 2003

CERTIFICATE OF SERVICE

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this 12th day of June, 2003, a true and correct photocopy of the foregoing "Petition" was sent to the following persons:

Richard Smith
Accounting Policy Division
Federal Communications Commission
445 12th Street, SW
Room 5-A660
Washington, DC 20554
(By hand delivery)

Paul Garnett, Esq.
Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street, SW
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Elizabeth Franklin
Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street, SW
Room 4-C-405
Washington, DC 20554
(By hand delivery)



Ronald J. Jarvis